



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/563,257

07/05/2006

Christian Neumann

NEUMANN3

1268

1444 7590 10/28/2009
BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

10/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,257	Applicant(s) NEUMANN, CHRISTIAN	
	Examiner Charles E. Cooley	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060104</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1797

NON-FINAL OFFICE ACTION

1. **This application has been assigned to Technology Center 1700, Art Unit 1797 and the following will apply for this application:**

Please direct all written correspondence with the correct application serial number for this application to **Art Unit 1797**.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Priority

2. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

Information Disclosure Statement

3. Note the attached PTO-1449 form submitted with the Information Disclosure Statement filed 4 JAN 2006.

Drawings

4. The drawings are objected to because of the following informalities:
- a. bottom wall 10 is not labeled in Figure 5 – see p. 10, line 31.

Art Unit: 1797

Correction is required.

5. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

Art Unit: 1797

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Specification

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

7. The disclosure is objected to because of the following informalities:

a. Page 4, line 1: replace "<<containers>>" with --"containers"-- or the like.

b. The specification should have the following headings inserted therein at the appropriate locations in accordance with 37 CFR 1.77:

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the title of the invention, each of the lettered items should be preceded by the headings indicated below.

- (a) Title of the Invention.
- (b) Cross-References to Related Applications (if any).
- (c) Statement as to rights to inventions made under Federally-sponsored research and development (if any).
- (d) Background of the invention.
 - 1. Field of the Invention.
 - 2. Description of the Related Art including information disclosed under 37 C.F.R. §§ 1.97-1.99.
- (e) Summary of the Invention.
- (f) Brief Description of the Drawing.
- (g) Description of the Preferred Embodiment(s).
- (h) Claim(s).
- (l) Abstract of the Disclosure.

Appropriate correction is required.

8. The Abstract of the Disclosure is objected to because:
- a. the inclusion of legal phraseology such as "means" in the abstract is improper.

Correction is required. See MPEP § 608.01(b).

9. The title is acceptable.

Claim Rejections - 35 U.S.C. § 112, second paragraph

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

All occurrences of "it" throughout the claims should positively rather than inferentially recite which element(s) is/are being referred to – note claims 1 and 3.

Claim 3: "the slit" lacks antecedent basis.

Claim 6: "the flaps" and "the openings" lack antecedent basis.

Art Unit: 1797

Claim 7: “is preferably” is considered a conditional limitation making the claim vague and indefinite.

Claim 8: “the flap” lacks antecedent basis.

Claim 10: “the flaps” lacks antecedent basis.

12. Each pending claim should be thoroughly reviewed such that these and any other informalities are corrected so the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 103

13. The terms used in this respect are given their broadest reasonable interpretation in their ordinary usage in context as they would be understood by one of ordinary skill in the art, in light of the written description in the specification, including the drawings, without reading into the claim any disclosed limitation or particular embodiment. See, e.g., *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989). The Examiner interprets claims as broadly as reasonable in view of the specification, but does not read

Art Unit: 1797

limitations from the specification into a claim. *Elekta Instr. S.A.v.O.U.R. Sci. Int'l, Inc.*, 214 F.3d 1302, 1307 (Fed. Cir. 2000).

14. To determine whether subject matter would have been obvious, "the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented."

Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966).

The Supreme Court has noted:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1740-41 (2007). "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." (Id. at 1742).

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter

Art Unit: 1797

sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 1, 2, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,941,635) in view of Hutchinson (US 5,121,857).

The patent to Stewart '635 discloses a system and method including a rigid container 14; peristaltic pump 73; bag 12; the upper face 18 of the bag includes an orifice 38 for the liquid to return through which said liquid returns to the inside of the bag, said orifice is connected in fixed manner by means of an external mixing duct 68 which is inserted into the pump 73; the pump 73 being open (peristaltic type) so that the mixing duct 68 can be inserted into it and extracted from it. Stewart does not disclose the lower face of the bag includes an orifice for the liquid to discharge to the outside of the bag or the bottom of the container is fitted with an elongated slit allowing the insertion and the passage of the mixing duct. The patent to Hutchinson discloses a system and method including a rigid container 12; peristaltic pump 26 connected to external mixing duct 18, 28; a bag 14; the lower face of the bag 14 includes an orifice 16 for the liquid to discharge to the outside of the bag; the bottom of the container 12 is fitted with an elongated slit (about 16 - Fig. 1) allowing the insertion and the passage of the mixing duct 18, 28. It would have been obvious and mere common sense to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the lower face of the bag in Stewart with an orifice for the liquid to discharge to the outside of the bag and the bottom of the container with an elongated slit allowing the

Art Unit: 1797

insertion and the passage of the mixing duct for the purposes of dispersing the solid particles that have settled in the bottom of the bag back into the liquid in the bag (col. 1, lines 11-15 and col. 2, lines 23-34).

17. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,941,635) in view of Hutchinson (US 5,121,857) as applied to claim 1 above and further in view of Bibbo et al. (US 2003/0231546 A1).

Stewart (US 5,941,635) in view of Hutchinson (US 5,121,857) do not disclose the door. Bibbo et al. discloses an analogous system including a rigid container 20 for holding a mixing bag 202 wherein the container 20 has a door 25 thereon. It would have been obvious and mere common sense to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the container of Stewart in view of Hutchinson with a door as taught by Bibbo et al. for the purpose of allowing selective access to the interior of the container and enabling closing off the container (see ¶ [0086] – [0091]).

18. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,941,635) in view of Hutchinson (US 5,121,857) as applied to claim 13 above and further in view of Bibbo et al. (US 2003/0231546 A1).

Stewart (US 5,941,635) in view of Hutchinson (US 5,121,857) do not disclose the flow rate. The patent to Thanoo et al. discloses a recirculation circuit (Fig. 4) with a mixing vessel 316, external mixing line 322, and a Watson-Marlow peristaltic pump 340.

Art Unit: 1797

The pump is operated to provide a flow rate of a recirculated mixture within the recited range. It would have been obvious and mere common sense to one having ordinary skill in the art, at the time applicant's invention was made, to have operated the peristaltic pump in Stewart in view of Hutchinson to provide a flow rate within the recited range since Thanoo et al. teaches such a flow rate is suitable for a recirculation system (col. 10, lines 54-66).

Allowable Subject Matter

19. Claims 3 and 5-12 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley in Art Unit 1797 whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri.. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles E. Cooley/

Charles E. Cooley
Primary Examiner
Art Unit 1797

27 October 2009